

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 242 OF 2005

BETWEEN:

PATSY SHALLOW

Claimant

v

THADDEUS FRANK

Defendant

CONSOLIDATED WITH

HIGH COURT CIVIL CLAIM NO. 241 OF 2005

BETWEEN:

CHRISTINA THOMAS

Claimant

v

THADDEUS FRANK

Defendant

Appearances: Ms. Niara Fraser for the Claimants.
Mr. Joseph Delves for the Defendant.

2008: April 23;
September 16.

JUDGMENT

[1] **THOM, J:** This is a consolidated claim for damages for assault and battery.

[2] Christina Thomas is the mother of Patsy Shallow. They and Thaddeus Frank all reside at Glenside Mesopotamia.

- [3] On the 23rd day of March 2003 Christina was walking on a piece of land which she claims to be her own. At the time she was carrying a bunch of plantains on her head. Thaddeus Frank who also claims the same piece of land as his land objected to Christina Thomas walking on the land. He knocked the plantains off her head. Christina Thomas alleges that Thaddeus Frank also beat her with a piece of steel and caused her to suffer several injuries. A few minutes later Patsy Shallow went to the scene and she alleged that Thaddeus Frank told her to get off his land. She held her mother and said she was going to report the matter to the Police whereupon Thaddeus Frank struck her with the steel several times as a result of which she received injuries.
- [4] Thaddeus Frank denied that he struck Christina Thomas and he alleged that it was Patsy Shallow who had the steel and she struck him several times with the steel causing him injuries. While she was striking him Christina Thomas got injured. He further alleged that Christina Thomas attacked him and tore his jersey. He admitted that he struck Patsy Shallow. He alleged he was acting in defence of his property and his person.

ISSUES:

- [5] The issues to be determined are whether Thaddeus Frank committed assault and battery on Christina Thomas and Patsy Shallow and if he did so whether he used reasonable force in defence of his property and or his person.

SUBMISSIONS:

- [6] Learned Counsel for Thaddeus Frank submitted that the Court should accept the evidence of Thaddeus Frank. The incident arose as a result of the unlawful act of Christina Thomas. Learned Counsel stressed that it was Patsy Shallow who went to the scene of the incident armed with a piece of steel and referred the Court to the testimony of Aretha Baptiste a neighbour of Patsy Shallow who testified in the criminal trial at the Magistrate Court as a witness for the Prosecution. Learned Counsel concluded that Thaddeus Frank acted reasonably in the circumstances.

- [7] Learned Counsel for Christina Thomas and Patsy Shallow submitted that Thaddeus Frank's actions were unreasonable in the circumstances and referred the Court to the cases of **Eustace St. Rose v Eric Gordon** No. 0352 of 1996 H.C. Dominica; and **Shaaira Alexis v John Small** No. 22 of 1999 H.C. Grenada.

LAW:

- [8] It is settled law that a man may resist trespass to his property or his person. However, in doing so he may not use unreasonable force. In the **Eustace St. Rose** case Rawlins J (as he then was) after reviewing the cases of **Lane v Holloway** [1968] 1 QB 379, **Murphy v Culhane** [1976] 3 AER 533 and **Fontin v Katapodis** [1962] 108 CLR 156 stated as follows at paragraph 16:

- "1. In a civil action for damages for injuries sustained in which the Claimant initiated or contributed to the incident by his own unlawful acts, a Defendant may avail himself of the defences *exturpi causa non oritur* action and *volenti non fit injuria* or even self defence.
2. These defences may not be available to the Defendant, however even if the Claimant initiated or contributed to the incident if the subsequent injury to the Claimant is inflicted with a weapon, particularly where the injured person did not himself have a weapon or by a blow that is out of all proportion to the occasion.
3. In the circumstances that falls under (2) however a Defendant may not be liable if he can prove accident or self-defence."

EVIDENCE:

- [9] Christina Thomas and Patsy Shallow gave evidence on their own behalf and Thaddeus Frank gave evidence on his behalf.
- [10] The evidence on behalf of Christina Thomas and Patsy Shallow is that Christian Thomas was walking on a portion of land that belonged to her. Deed No. 2607 of 2004 was tendered in evidence. It shows that Christina Thomas became owner of the land being the sole beneficiary of the estate of Ruth Frank. The Deed is dated 14th July 2004. This is

after the date of the incident. Thaddeus Frank who claims the same land objected to her walking across the land and he pushed the plantain off her head, beat her with a piece of steel, and she fell. She suffered several injuries. While Christina Thomas was lying on the ground Patsy Shallow went to her. Thaddeus Frank told her to leave his property. She held Christina Thomas and said she was going to get the Police. Thaddeus Frank then hit her several times with the piece of steel and as a result she suffered several injuries. The matter was reported to the Police. Thaddeus Frank was convicted of inflicting grievous bodily harm on Christina Thomas. He was acquitted of inflicting grievous bodily harm on Patsy Shallow. His appeal to the Court of Appeal was dismissed. Christina Thomas was examined by Dr. Debnath and Dr. George Walker. The medical report of Dr. Debnath states as follows:

- “1. Lacerated wound on the right side of upper lip which was sutured and dressed.
2. Tenderness over right shoulder and swelling.
3. Tenderness and marks of scratches on the back.
4. Swelling and tenderness with bluish discoloration on the left thigh.
5. She was unable to walk properly and was full of pain almost all over the body.”

The medical report of Dr. George Walker a Dental Surgeon shows that extractions from the upper maxillar had to be done on Christina Thomas.

[11] The medical report of Dr. Asok Datta shows that Patsy Shallow had the following injuries:

- “1. Head – parietal area had 5 cm x 6 cm soft tissue swelling.
2. Left maxillary area had 2 cm long laceration below left eyelid and same area had 5 cm x 3 cm soft tissue swelling.
3. Left wrist area was swollen and distal radius bone was fractured.
4. Left lower forearm was swollen and ulna bone fractured.
5. Left mid anterior thigh had 7 cm x 5 cm bruises.”

[12] The evidence of Thaddeus Frank is that he owned the land on which Christina Thomas was walking on the day of the incident. He tendered in evidence a Declaration of Title and possession of the land dated 3rd April 2003 No. 1108 of 2003. It must be noted that this Declaration was made after the incident. He further stated that when he saw Christina Thomas walking on his land he told her not to walk on his land. She continued and he went to her and pushed the bunch of plantains off her head. Christina Thomas threw herself to the ground and began rolling around on the ground. Patsy Shallow then came

with a piece of steel and she began swinging it at him. Patsy Shallow and Christina Thomas ripped off his shirt. He cuffed Patsy Shallow and he pushed her and she fell to the ground. He got the steel from her. Patsy Shallow hit him with a stone in his head. Patsy Shallow was approaching and he used the steel to hit her to keep her off him. He was given pain-killing tablets at the Mesopotamia Health Centre and he was examined by Doctor Woods who gave him some treatment and told him to use warm water. He further testified that the medical report of Dr. Woods was tendered at the Magisterial Court.

[13] Having seen and heard all of the parties, I did not find Thaddeus Frank to be a credible witness. Under cross-examination he initially stated that he was not aware that Christina Thomas was claiming ownership of the property that it was the first time she was walking across the land. However, on further cross-examination he admitted that he had caused his Attorney to write to Christina Thomas not to trespass on the land. Further in his witness statement Thaddeus Frank stated that he went up to Christina Thomas and pushed the plantains off her head and then she threw herself on the ground and began rolling on the ground. Under cross-examination he stated in effect that when he pushed the plantains off Christina Thomas' head she sat on the ground. She rolled around after her daughter arrived about six minutes later. I find that the injuries sustained by Christina Thomas and Patsy Shallow were consistent with their evidence of how the incident occurred.

[14] Christina Thomas at the time of this incident was sixty seven years old. She was walking across a piece of land that she is claiming belongs to her as the sole beneficiary of the estate of Ruth Frank. She was not armed with any weapon. In contrast Thaddeus Frank is a much younger, well built, robust man. The injuries suffered by this sixty seven years old woman (at the time of the incident) were many. As a result of the injuries several of her teeth had to be extracted. Patsy Shallow suffered several injuries including two fractures.

[15] Learned Counsel for Thaddeus Frank made reference to Aretha Baptiste's testimony in the Magistrate Court that Patsy Shallow who went to the scene with a piece of steel. Ms. Baptiste did not file a witness statement or give evidence at the trial. I was not able to

observe her demeanor and assess her credibility. I therefore attach no weight to her testimony in the Magistrate Court. In any event Aretha Baptiste's testimony does not in any way show that Thaddeus Frank was acting reasonably in defence of his property or person. The relevant part of her evidence in the Magistrate Court reads as follows; first in examination-in-chief:

"... 26th March 2003, 7:30 a.m. I was at home when I was combing my hair. Mrs. Thomas was passing and Thaddeus call out and tell she no road is not there. Then I run out. He take up piece of wood and beat she and she fell two (2) times. She had a bunch of plantain on she head. She drop and she fell on the ground and the plantain drop and I run and called Patsy Shallow. Patsy run with her baby. She had a piece of steel and she run with it and I take the baby from she. She ask her mother way happen to she when she bend to put down the steel, Defendant pull the steel and he started to beat both of them with the steel. Then Patsy fell and she take up a small stone and hit Thaddeus and he continue beating both of them and Patsy get way and she run."

[16] Under cross examination she stated as follows:

"After Thaddeus tell Mrs. Thomas don't walk there Larry turn back and walk on the road. Larry run with the plantain after Defendant was going to hit him with piece of board. Defendant did have piece of board that day. Patsy had the baby and piece of steel in her hand when she ran out of the house, the same piece of steel Defendant hit virtual complainant with – she hit him somewhere across the head. When she bend down to put down the steel asking her mother what happen – Defendant pull it and hit her with it. She did not do nothing with the steel – she did not know what I call she for – when she coming Defendant was on the spot – when she came on the scene Defendant stopped and she asked her mother what happen and Defendant start beating her, Patsy."

[17] Aretha Baptiste's testimony shows that Thaddeus Frank was armed when he approached Christina Thomas, that he beat both Christina Thomas and Patsy Shallow and Patsy Shallow only hit Thaddeus Frank with a small stone after he was beating her with the piece of steel. At no time did she state that Patsy Shallow struck or attempted to strike Thaddeus Frank with the piece of steel.

[18] Having regard to all of the evidence I find that Thaddeus Frank used more force than was necessary.

[19] It is ordered that:

- (1) Judgment is entered for Patsy Shallow and Christina Thomas against Thaddeus Frank.
- (2) Damages to be assessed.
- (3) Costs to Patsy Shallow and Christina Thomas to be prescribed costs.

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Gertel Thom
HIGH COURT JUDGE